

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 1082

Introduced by Senators Morrow and Ducheny

(Principal coauthor: Senator Ashburn)

**(Coauthors: Senators Cox, Denham, Dunn, Dutton, Machado,
Soto, and Speier)**

(Coauthors: Assembly Members Cogdill, DeVore, Haynes, Shirley Horton, Houston, Huff, La Malfa, La Suer, Leslie, Maze, Mountjoy, Niello, Oropeza, Parra, Plescia, Sharon Runner, Ruskin, Umberg, and Wyland)

February 22, 2005

An act to amend Sections 3651, 3653, and 17560 of, and to add Sections 3047 and 17440 to, the Family Code, relating to child support, *and declaring the urgency there of to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1082, as amended, Morrow. Child support: military reservists.

(1) Existing law sets forth provisions by which a support order may be revised by the court and specifies that a support order may not be modified or terminated as to an amount that accrued before filing of a motion or an order to show cause to modify, except as specified.

This bill would create an additional exception to this rule to permit service members, activated to United States military duty or National Guard service and deployed out of state, to request modification of a support order, as specified. The bill would require the service member

to indicate the date of deployment and would require the court, if possible, to schedule a hearing on the matter prior to that date, or grant a stay of the motion or order to show cause for modification consistent with certain federal timelines for stays. This bill would impose additional requirements on a court that fails to grant a discretionary stay and would provide that a service member, who does not file a notice of activation of military service and request to modify a support order prior to deployment out of state, is not subject to penalties on the amount of child support that would not have accrued if the order had been modified, as specified. The bill would also require the Judicial Council to develop any forms and procedures necessary to implement those provisions.

The bill would also provide that a party's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure is the party's activation to military service and deployment out of state.

(2) Existing law permits an order modifying or terminating a support order to be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as specified.

This bill would provide that if an order modifying or terminating a support order is entered due to a change in income resulting from the activation to military service or National Guard duty and deployment overseas for either the support obligor or support obligee, the order shall be made retroactive in accordance with specified requirements.

The bill would also require the Department of Child Support Services to work with the military and National Guard to ensure that information regarding the ability of service members to have support orders modified based on a change of income is made readily available to those service members. The bill would additionally require that department to develop a form for completion by the service member to allow the local child support agency to proceed with a motion for modification of a support order without the service member being required to appear. By placing new duties on local child support agencies, the bill would impose a state-mandated local program.

(3) Existing law establishes an arrears collection enhancement process pursuant to which the Department of Child Support Services may accept offers in compromise of child support arrears and interest

accrued thereon owed to the state for reimbursement of aid paid pursuant to the California Work Opportunity and Responsibility to Kids Act (CalWORKs program).

This bill would provide that the acceptance of an offer in compromise shall be deemed to be in the state's best interest with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to military service, and failed to modify the support order to reflect the reduction in income. The bill would also specify that those changes apply to all service members deployed out of state, regardless of whether those members were deployed before or after the effective date of the bill. The bill would also require the director of that department to establish specified rules in accordance with this provision.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) *The bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3047 is added to the Family Code, to
2 read:
3 3047. A party's absence, relocation, or failure to comply with
4 custody and visitation orders shall not, by itself, be sufficient to
5 justify a modification of a custody or visitation order if the
6 reason for the absence, relocation, or failure to comply is the
7 party's activation to military service and deployment out of state.
8 SEC. 2. Section 3651 of the Family Code is amended to read:
9 3651. (a) Except as provided in subdivisions (c) and (d) and
10 subject to Article 3 (commencing with Section 3680) and

1 Sections 3552, 3587, and 4004, a support order may be modified
2 or terminated at any time as the court determines to be necessary.

3 (b) Upon the filing of a supplemental complaint pursuant to
4 Section 2330.1, a child support order in the original proceeding
5 may be modified in conformity with the statewide uniform
6 guideline for child support to provide for the support of all of the
7 children of the same parents who were named in the initial and
8 supplemental pleadings, to consolidate arrearages and wage
9 assignments for children of the parties, and to consolidate orders
10 for support.

11 (c) (1) Except as provided in paragraph (2) and subdivision
12 (b), a support order may not be modified or terminated as to an
13 amount that accrued before the date of the filing of the notice of
14 motion or order to show cause to modify or terminate.

15 (2) If a party to a support order is activated to United States
16 military duty or National Guard service and deployed out of
17 state, the service member may file and serve a notice of
18 activation of military service and request to modify a support
19 order, in lieu of a notice of motion or order to show cause, by
20 informing the court and the other party of the request to modify
21 the support order based on the change in circumstance. The
22 service member shall indicate the date of deployment, and if
23 possible, the court shall schedule the hearing prior to that date. If
24 the court cannot hear the matter prior to the date of deployment
25 out of state, and the service member complies with the conditions
26 set forth in the Servicemembers Civil Relief Act, Section 522 of
27 the Appendix of Title 50 of the United States Code, the court
28 shall grant a stay of proceedings consistent with the time lines for
29 stays set forth in that section. If, after granting the mandatory
30 stay required by Section 522 of the Appendix of Title 50 of the
31 United States Code, the court fails to grant the discretionary stay
32 described under the law, it shall comply with the federal mandate
33 to appoint counsel to represent the interests of the deployed
34 service member. The court may not proceed with the matter if it
35 does not appoint counsel, unless the service member is
36 represented by other counsel. If the court stays the proceeding
37 until after the return of the service member, the service member
38 shall request the court to set the matter for hearing within 90 days
39 of return from deployment or the matter shall be taken off

1 calendar and the existing order may not be made retroactive
2 pursuant to subdivision (c) of Section 3653.

3 (3) A service member who does not file a notice of activation
4 of military service and request to modify a support order or order
5 to show cause or notice of motion prior to deployment out of
6 state nonetheless shall not be subject to penalties otherwise
7 authorized by Chapter 5 (commencing with Section 4720) of Part
8 5 on the amount of child support that would not have accrued if
9 the order had been modified pursuant to paragraph (2), absent a
10 finding by the court of good cause. Any such finding shall be
11 stated on the record.

12 (4) Notwithstanding any other provision of law, no interest
13 shall accrue on that amount of a child support obligation that
14 would not have become due and owing if the activated service
15 member modified his or her support order upon activation to
16 reflect the change in income due to the activation. Upon a finding
17 by the court that good cause did not exist for the service
18 member's failure to seek, or delay in seeking, the modification,
19 interest shall accrue as otherwise allowed by law.

20 (d) An order for spousal support may not be modified or
21 terminated to the extent that a written agreement, or, if there is no
22 written agreement, an oral agreement entered into in open court
23 between the parties, specifically provides that the spousal support
24 is not subject to modification or termination.

25 (e) This section applies whether or not the support order is
26 based upon an agreement between the parties.

27 (f) This section is effective only with respect to a property
28 settlement agreement entered into on or after January 1, 1970,
29 and does not affect an agreement entered into before January 1,
30 1970, as to which Chapter 1308 of the Statutes of 1967 shall
31 apply.

32 (g) (1) The Judicial Council, no later than 90 days after the
33 effective date of the act adding this section, shall develop any
34 forms and procedures necessary to implement paragraph (2) of
35 subdivision (c). The Judicial Council shall ensure that all forms
36 adopted pursuant to this section are in plain language.

37 (2) The form developed by the Judicial Council, in addition to
38 other items the Judicial Council determines to be necessary or
39 appropriate, shall include the following:

1 (A) The date of deployment and all information relevant to the
2 determination of the amount of child support, including whether
3 the service member's employer will supplement the service
4 member's income during the deployment.

5 (B) A notice informing the opposing party that, absent a
6 finding of good cause, the order will be made retroactive to the
7 date of service of the form or the date of deployment, whichever
8 is later.

9 (C) Notice that the requesting party must notify the court and
10 the other party upon return from military duty and seek to bring
11 any unresolved request for modification to hearing within 90
12 days of return, or else lose the right to modify the order pursuant
13 to this section.

14 SEC. 3. Section 3653 of the Family Code is amended to read:

15 3653. (a) An order modifying or terminating a support order
16 may be made retroactive to the date of the filing of the notice of
17 motion or order to show cause to modify or terminate, or to any
18 subsequent date, except as provided in subdivision (b) or by
19 federal law (42 U.S.C. Sec. 666(a)(9)).

20 (b) If an order modifying or terminating a support order is
21 entered due to the unemployment of either the support obligor or
22 the support obligee, the order shall be made retroactive to the
23 later of the date of the service on the opposing party of the notice
24 of motion or order to show cause to modify or terminate or the
25 date of unemployment, subject to the notice requirements of
26 federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds
27 good cause not to make the order retroactive and states its
28 reasons on the record.

29 (c) If an order modifying or terminating a support order is
30 entered due to a change in income resulting from the activation to
31 United States military service or National Guard duty and
32 deployment out of state for either the support obligor or the
33 support obligee, the order shall be made retroactive to the later of
34 the date of the service on the opposing party of the notice of
35 activation, notice of motion, order to show cause to modify or
36 terminate, or the date of activation, subject to the notice
37 requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless
38 the court finds good cause not to make the order retroactive and
39 states its reasons on the record. Good cause shall include, but not
40 be limited to, a finding by the court that the delay in seeking the

1 modification was not reasonable under the circumstances faced
2 by the service member.

3 (d) If an order decreasing or terminating a support order is
4 entered retroactively pursuant to this section, the support obligor
5 may be entitled to, and the support obligee may be ordered to
6 repay, according to the terms specified in the order, any amounts
7 previously paid by the support obligor pursuant to the prior order
8 that are in excess of the amounts due pursuant to the retroactive
9 order. The court may order that the repayment by the support
10 obligee shall be made over any period of time and in any manner,
11 including, but not limited to, by an offset against future support
12 payments or wage assignment, as the court deems just and
13 reasonable. In determining whether to order a repayment, and in
14 establishing the terms of repayment, the court shall consider all
15 of the following factors:

16 (1) The amount to be repaid.

17 (2) The duration of the support order prior to modification or
18 termination.

19 (3) The financial impact on the support obligee of any
20 particular method of repayment such as an offset against future
21 support payments or wage assignment.

22 (4) Any other facts or circumstances that the court deems
23 relevant.

24 SEC. 4. Section 17440 is added to the Family Code, to read:

25 17440. (a) The Department of Child Support Services shall
26 work with all branches of the United States military and the
27 National Guard to ensure that information is made available
28 regarding the rights and abilities of activated service members to
29 have their support orders modified based on a change in income
30 resulting from their activation, or other change of circumstance
31 affecting the child support calculation, or to have a portion of
32 their child support arrearages compromised pursuant to Section
33 17560.

34 (b) No later than 90 days after the effective date of this
35 section, the department shall develop a form for completion by
36 the service member that will allow the local child support agency
37 to proceed with a motion for modification without the service
38 member being required to appear. The form shall contain only
39 the information necessary for the local child support agency to
40 proceed with the motion.

(c) Within five business days of receipt of a properly completed form, the local child support agency shall bring a motion to modify the support order. The local child support agency shall bring the motion if the change in circumstances would result in any change in the dollar amount of the support order.

(d) The department shall work with the United States military to have this form and the form developed pursuant to Section 3651 distributed at all mobilization stations or other appropriate locations to ensure timely notification to all activated personnel of their rights and responsibilities.

SEC. 5. Section 17560 of the Family Code is amended to read:

17560. (a) The department shall create a program establishing an arrears collection enhancement process pursuant to which the department may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. The program shall operate uniformly across California and shall take into consideration the needs of the children subject to the child support order and the obligor's ability to pay.

(b) If the obligor owes current child support, the offer in compromise shall require the obligor to be in compliance with the current support order for a set period of time before any arrears and interest accrued thereon may be compromised.

(c) Absent a finding of good cause, any offer in compromise entered into pursuant to this section shall be rescinded, all compromised liabilities shall be reestablished notwithstanding any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise may be refunded, if either of the following occurs:

(1) The department or local child support agency determines that the obligor did any of the following acts regarding the offer in compromise:

(A) Concealed from the department or local child support agency any income, assets, or other property belonging to the obligor or any reasonably anticipated receipt of income, assets, or other property.

1 (B) Intentionally received, withheld, destroyed, mutilated, or
2 falsified any information, document, or record, or intentionally
3 made any false statement, relating to the financial conditions of
4 the obligor.

5 (2) The obligor fails to comply with any of the terms and
6 conditions of the offer in compromise.

7 (d) Pursuant to subdivision (k) of Section 17406, in no event
8 may the administrator, director, or director's designee within the
9 department, accept an offer in compromise of any child support
10 arrears owed directly to the custodial party unless that party
11 consents to the offer in compromise in writing and participates in
12 the agreement. Prior to giving consent, the custodial party shall
13 be provided with a clear written explanation of the rights with
14 respect to child support arrears owed to the custodial party and
15 the compromise thereof.

16 (e) Subject to the requirements of this section, the director
17 may delegate to the administrator of a local child support agency
18 the authority to compromise an amount of child support arrears
19 that does not exceed five thousand dollars (\$5,000). Only the
20 director or his or her designee may compromise child support
21 arrears in excess of five thousand dollars (\$5,000).

22 (f) For an amount to be compromised under this section, the
23 following conditions shall exist:

24 (1) (A) The administrator, director or director's designee
25 within the department determines that acceptance of an offer in
26 compromise is in the best interest of the state and that the
27 compromise amount equals or exceeds what the state can expect
28 to collect for reimbursement of aid paid pursuant to Chapter 2
29 (commencing with Section 11200) of Part 3 of Division 9 of the
30 Welfare and Institutions Code in the absence of the compromise,
31 based on the obligor's ability to pay.

32 (B) Acceptance of an offer in compromise shall be deemed to
33 be in the best interest of the state, absent a finding of good cause
34 to the contrary, with regard to arrears that accrued as a result of a
35 decrease in income when an obligor was a reservist or member of
36 the National Guard, was activated to United States military
37 service, and failed to modify the support order to reflect the
38 reduction in income. Good cause to find that the compromise is
39 not in the best interest of the state shall include circumstances in
40 which the service member's failure to seek, or delay in seeking,

1 the modification were not reasonable under the circumstances
2 faced by the service member. The director, no later than 90 days
3 after the effective date of the act adding this subparagraph, shall
4 establish rules that compromise, at a minimum, the amount of
5 support that would not have accrued had the order been modified
6 to reflect the reduced income earned during the period of active
7 military service.

8 (2) Any other terms and conditions that the director establishes
9 that may include, but may not be limited to, paying current
10 support in a timely manner, making lump sum payments, and
11 paying arrears in exchange for compromise of interest owed.

12 (3) The obligor shall provide evidence of income and assets,
13 including, but not limited to, wage stubs, tax returns, and bank
14 statements and establish all of the following:

15 (A) That the amount set forth in the offer in compromise of
16 arrears owed is the most that can be expected to be paid or
17 collected from the obligor's present assets or income.

18 (B) That the obligor does not have reasonable prospects of
19 acquiring increased income or assets that would enable the
20 obligor to satisfy a greater amount of the child support arrears
21 than the amount offered, within a reasonable period of time.

22 (C) That the obligor has not withheld payment of child support
23 in anticipation of the offers in compromise program.

24 (g) A determination by the administrator, director or the
25 director's designee within the department that it would not be in
26 the best interest of the state to accept an offer in compromise in
27 satisfaction of child support arrears shall be final and not subject
28 to the provisions of Chapter 5 (commencing with Section 17800)
29 of Division 17, or subject to judicial review.

30 (h) Any offer in compromise entered into pursuant to this
31 section shall be filed with the appropriate court. The local child
32 support agency shall notify the court if the compromise is
33 rescinded pursuant to subdivision (c).

34 (i) Any compromise of child support arrears pursuant to this
35 section shall maximize to the greatest extent possible the state's
36 share of the federal performance incentives paid pursuant to the
37 Child Support Performance and Incentive Act of 1998 and shall
38 comply with federal law.

39 (j) The department shall ensure uniform application of this
40 section across the state.

1 (k) The department shall consult with the Franchise Tax Board
2 in the development of the program established pursuant to this
3 section.

4 (l) The department shall report to the Legislature on the results
5 of the program established pursuant to this section no later than
6 June 30, 2006.

7 (m) This section shall remain in effect only until January 1,
8 2007, and as of that date is repealed unless a later enacted statute,
9 that is enacted before January 1, 2007, deletes or extends that
10 date.

11 SEC. 6. The amendments to Section 17560 of the Family
12 Code made by this act shall apply to all service members
13 deployed out of state, regardless of whether that deployment
14 occurred before or after the effective date of this act.

15 SEC. 7. If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.

20 *SEC. 8. This act is an urgency statute necessary for the*
21 *immediate preservation of the public peace, health, or safety*
22 *within the meaning of Article IV of the Constitution and shall go*
23 *into immediate effect. The facts constituting the necessity are:*

24 *In order to ensure that the parental rights of soldiers and*
25 *sailors who return from active duty service in Iraq and*
26 *Afghanistan on or before December 31, 2005 are protected to the*
27 *same extent as those of soldiers and sailors who return after that*
28 *date, it is necessary that this act take effect immediately.*